

*Office of the General Counsel*

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July 8, 2005

TO: Most Reverend Archbishops and Bishops, Diocesan Attorneys
and State Conference Directors

SUBJECT: 2005 Group Ruling

FROM: Mark E. Chopko, General Counsel *MEC*
(Staff: Deirdre Dessingue, Associate General Counsel)

Attached is a copy of the Group Ruling issued to the United States Conference of Catholic Bishops on July 1, 2005 by the Internal Revenue Service ("IRS"), with respect to the federal tax status of Catholic organizations listed in the 2005 edition of the Official Catholic Directory ("OCD")^{1/}. As explained in greater detail below, this ruling is important for establishing:

- (1) the exemption of such organizations from:
 - (a) federal income tax;
 - (b) federal unemployment tax (but see ¶5 of "Explanation" below); and
- (2) the deductibility, for federal income, gift and estate tax purposes, of contributions to such organizations.

The 2005 Group Ruling is the latest in a series that began with the original determination of March 25, 1946. In the 1946 document, the Treasury Department affirmed the exemption from federal income tax of all Catholic institutions listed in the OCD for that year. Each year since 1946, in a separate letter, the 1946 ruling has been extended to cover the institutions listed in the current OCD^{2/}. The language of these rulings has remained relatively unchanged, except to reflect intervening modifications in the Internal Revenue Code ("Code"). The 2005 Group Ruling is consistent with the 2004 ruling.

Annual group rulings clarify important tax consequences for Catholic institutions listed in the OCD, and should be retained for ready reference. Rulings from earlier years are important to establish the tax consequences of transactions that occurred during those years.

¹ A copy of the Group Ruling and this memo may be found on the USCCB website at www.usccb.org/ogc.

² Catholic organizations with independent IRS exemption determination letters are listed in the 2005 OCD with an asterisk (*), which is explained at page A-6 and indicates that such organizations are not covered by the Group Ruling.

Responsibilities under Group Ruling. *Diocesan officials who compile OCD information for transmittal to the OCD publisher are responsible for the accuracy of such information. This means that they must ensure that only qualified organizations are listed, that organizations that cease to qualify are deleted promptly, and that qualified newly-created organizations are listed as soon as possible. The current application package for inclusion in the Group Ruling and OCD is available at <http://www.usccb.org/bishops/dfi/exemptionruling.htm>.*

EXPLANATION

1. **Exemption from Federal Income Tax.** The latest ruling reaffirms the exemption from federal income tax under section 501(c)(3) of the Code of "the agencies and instrumentalities and educational, charitable, and religious institutions operated, supervised or controlled by or in connection with the Roman Catholic Church in the United States, its territories or possessions appearing in the Official Catholic Directory for 2005" (*with the exception of organizations designated in the OCD with an asterisk and foreign organizations*).
2. **Federal Excise Taxes.** Inclusion in the Group Ruling has no effect on an organization's liability for federal excise taxes. Exemption from these taxes is very limited. Please refer to your attorney any questions you may have about excise taxes.
3. **State/Local Taxes.** Inclusion in the Group Ruling does not automatically establish an organization's exemption from state or local income, sales or property taxes. Typically, separate exemptions must be obtained from the appropriate state or local tax authorities in order to qualify for any applicable exemptions. Please refer to your attorney any questions you may have about state or local tax exemptions.
4. **Deductibility of Contributions.** The Group Ruling assures donors that contributions to the institutions listed in the 2005 OCD and covered by the Group Ruling are deductible for federal income, gift, and estate tax purposes.
5. **Unemployment Tax.** The Group Ruling establishes exemption from *federal* unemployment tax only. Individual states may impose unemployment tax on organizations included in the Group Ruling, even though they are exempt from the federal tax. Please refer to your attorney any questions you may have about state unemployment tax.
6. **Social Security Tax.** All section 501(c)(3) organizations, including churches, are required to pay taxes under the Federal Insurance Contributions Act (FICA) for each employee who is paid \$100 or more in a calendar year.^{3/} Services

³ Section 3121(w) of the Code permits certain church-related organizations to make an irrevocable election to avoid payment of FICA taxes, but only if such organizations are opposed for religious reasons to payment of social security taxes.

performed by diocesan priests in the exercise of their ministry are not considered "employment" for FICA (Social Security) purposes,^{4/} and FICA should not be withheld from their salaries. *For Social Security purposes*, diocesan priests are subject to self-employment tax ("SECA") on their salaries as well as on the value of meals and housing or housing allowances provided to them.^{5/} Neither FICA nor income tax withholding is required on remuneration paid to religious institutes for members who are subject to vows of poverty and obedience and are employed by organizations included in the Official Catholic Directory.^{6/}

7. **Form 990.** All organizations included in the OCD must file Form 990, Return of Organization Exempt from Income Tax, *unless* they are eligible for a mandatory or discretionary exception. ***There is no automatic exemption from the Form 990 filing requirement simply because an organization is listed in the OCD.*** Organizations required to file Form 990 must do so by the 15th day of the fifth month after the close of their fiscal year.^{7/} Among the organizations not required to file Form 990 under section 6033 of the Code are: churches; integrated auxiliaries of churches^{8/}; the exclusively religious activities of religious orders; schools below college level affiliated with a church or operated by a religious order; organizations with gross receipts normally not in excess of \$25,000;^{9/} and certain church-affiliated

⁴ I.R.C. § 3121(b)(8)(A).

⁵ I.R.C. § 1402(a)(8). See also, Compensation of Priests, at <http://www.usccb.org/bishops/dfi/dualtax.htm>.

⁶ Rev. Rul. 77-290, 1977-2 C.B. 26. See also, Compensation of Religious, at <http://www.usccb.org/bishops/dfi/religiouscomp.htm>.

⁷ The penalty for failure to file the Form 990 is \$20 for each day the failure continues, up to a maximum of \$10,000 or 5 percent of the organization's gross receipts, whichever is less. However, organizations with annual gross receipts in excess of \$1 million are subject to penalties of \$100 per day, up to a maximum of \$50,000. I.R.C. § 6652(c)(1)(A).

⁸ I.R.C. § 6033(a)(2)(A)(i); Treas. Reg. § 1.6033-2(h). To qualify as an integrated auxiliary of a church, an organization must be described in section 501(c)(3), qualify as other than a private foundation, be affiliated with a church, and qualify as internally supported. An organization will be considered internally supported unless it both:

- (1) Offers admissions, goods, services, or facilities for sale, other than on an incidental basis, to the general public (except goods, services, or facilities sold at a nominal charge or substantially below cost), and
- (2) normally receives more than 50 percent of its support from a combination of governmental sources; public solicitation of contributions (such as through a community fund drive); and receipts from the sale of admissions, goods, performance of services, or furnishing of facilities in activities that are not unrelated trades or businesses.

⁹ Rev. Proc. 83-23, 1983-1 C.B. 687.

organizations that finance, fund or manage church assets, or maintain church retirement insurance programs, and organizations controlled by religious orders that finance, fund or manage assets used for exclusively religious activities.^{10/}

Organizations that are required to file Form 990 must upon request make a copy of the form and its schedules and attachments (other than contributor lists) available for public inspection during regular business hours at the organization's principal office and at any regional or district offices having three or more employees. Form 990 for a particular year must be made available for a three year period beginning with the due date of the return.^{11/} In addition, organizations that file Form 990 must comply with written or in-person requests for copies of the Form 990. The organization may impose no charge other than a reasonable fee to cover copying and mailing costs. If requested, copies of the Form 990 for the past three years must be provided. In-person requests must be satisfied on the same day. Written requests must be satisfied within 30 days.^{12/}

8. **Revenue Procedure 75-50.** Rev. Proc. 75-50^{13/} sets forth notice, publication, and recordkeeping requirements regarding racially nondiscriminatory policies that must be complied with by private schools, including church-related schools, as a condition of establishing and maintaining exempt status under section 501(c)(3) of the Code. Under Rev. Proc. 75-50 private schools are required to file an annual certification of racial nondiscrimination with the IRS. For private schools not required to file Form 990, the annual certification must be filed on Form 5578, Annual Certification of Racial Nondiscrimination for a Private School Exempt from Federal Income Tax. This form may be obtained from your local IRS office. Form 5578 must be filed by the 15th day of the fifth month following the close of the fiscal year. Form 5578 may be filed individually or by the diocese on behalf of all schools operated under diocesan auspices. The requirements of Rev. Proc. 75-50 remain in effect and must be complied with by all schools listed in the OCD. ***Diocesan or school officials should insure that the requirements of Rev. Proc. 75-50 are met since failure to do so could jeopardize the exempt status of the school***

¹⁰ Rev. Proc. 96-10, 1996-1 C.B. 577.

¹¹ The penalty for failure to permit public inspection of the Form 990 is \$20 for each day during which such failure continues, up to a maximum of \$10,000. I.R.C. § 6652(c)(1)(C).

¹² I.R.C. § 6104(d). Generally, a copy of an organization's exemption application and supporting documents must also be provided on the same basis. However, since Catholic organizations covered under the Group Ruling did not file exemption applications with IRS, nor did USCCB, organizations covered under the Group Ruling should respond to requests for public inspection and written or in-person requests for copies by providing a copy of the page of the current OCD on which they are listed. If a covered organization does not have a copy of the current OCD, it has two weeks within which to make it available for inspection and to comply with in-person requests for copies. Written requests must be satisfied within the general time limits.

¹³ 1975-2 C.B. 587.

and, in the case of a school operated by a church, the exempt status of the church itself.

9. **Lobbying Activities.** Organizations included in the OCD may lobby for changes in the law, provided such lobbying is not more than an insubstantial part of their total activities. Attempts to influence legislation both directly and through grassroots lobbying are subject to this restriction. The term "lobbying" includes activities in support of or in opposition to referenda, constitutional amendments, and similar ballot initiatives. There is no distinction between lobbying activity that is related to an organization's exempt purposes and lobbying that is not. There is no fixed percentage that constitutes a safe harbor for "insubstantial" lobbying. Please refer to your attorney any questions you may have about permissible lobbying activities.

10. **Political Activities.** Organizations included in the Group Ruling may not participate or intervene in any political campaign on behalf of or in opposition to any candidate for public office. Violation of the prohibition against political activity can jeopardize the organization's tax-exempt status. In addition to revoking exempt status, IRS may also impose excise taxes on an exempt organization and its managers on account of political expenditures. Where there has been a flagrant violation, IRS has authority to seek an injunction against the exempt organization and immediate assessment of taxes due. Political Campaign Activity Guidance for Catholic Organizations (March 15, 2004) available at www.usccb.org/ogc, contains detailed information regarding the political activity prohibition. If you have any questions in this regard, please refer them to your attorney.

11. **Public Charity Status.** The latest Group Ruling affirms that organizations included in the OCD are not private foundations under section 509(a) of the Code. However, the Group Ruling does not identify the subsection of section 509(a) under which a particular organization is classified as a public charity. Organizations must determine for themselves whether they qualify for such status under the provisions of section 509(a)(1), (a)(2) or (a)(3). Newly-created or newly-affiliated organizations must establish that they are not private foundations as a condition of inclusion in the Group Ruling and OCD.

12. **Group Exemption Number.** The group exemption number assigned to USCC is 928 or 0928. ***This number must be included on each Form 990, Form 990-T, and Form 5578 required to be filed by any organization exempt under the Group Ruling.***^{14/} We recommend *against* using the group exemption number on Form SS-4, Request for Employer Identification Number, because in the past this has resulted in IRS including USCCB as part of the organization's name when it enters the organization in its database.

¹⁴ IRS has expressed concern about organizations covered under the Group Ruling that fail to include the group exemption number, 0928, on their Form 990 filings, particularly the initial filing.

**Internal Revenue Service
District Director**

Department of the Treasury

**P. O. Box 2508
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Date: July 1, 2005

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Ms. Deirdre Dessingue
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MAILED
JUL 1 2005
U.S. DEPT. OF TREASURY

Dear Ms. Dessingue:

In a ruling dated March 25, 1946, we held that the agencies and instrumentalities and all educational, charitable and religious institutions operated, supervised, or controlled by or in connection with the Roman Catholic Church in the United States, its territories or possessions appearing in *The Official Catholic Directory* 1946, are entitled to exemption from federal income tax under the provisions of section 101(6) of the Internal Revenue Code of 1939, which corresponds to section 501(c)(3) of the 1986 Code. This ruling has been updated annually to cover the activities added to or deleted from the Directory.

The Official Catholic Directory for 2005 shows the names and addresses of all agencies and instrumentalities and all educational, charitable, and religious institutions operated by the Roman Catholic Church in the United States, its territories and possessions in existence at the time the Directory was published. It is understood that each of these is a non-profit organization, that no part of the net earnings thereof inures to the benefit of any individual, that no substantial part of their activities is for promotion of legislation, and that none are private foundations under section 509(a) of the Code.

Based on all information submitted, we conclude that the agencies and instrumentalities and educational, charitable, and religious institutions operated, supervised, or controlled by or in connection with the Roman Catholic Church in the United States, its territories or possessions appearing in *The Official Catholic Directory* for 2005 are exempt from federal income tax under section 501(c)(3) of the Code.

Donors may deduct contributions to the agencies, instrumentalities and institutions referred to above, as provided by section 170 of the Code. Bequests, legacies, devises, transfers or gifts to them or for their use are deductible for federal estate and gift tax purposes under sections 2055, 2106, and 2522 of the Code.

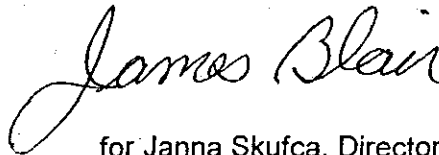
Ms. Deirdre Dessingue

Beginning January 1, 1984, unless specifically excepted, you and your subordinates must pay tax under the Federal Insurance Contributions Act (Social Security taxes) for each employee who is paid \$100 or more in a calendar year. You and your subordinates are not liable for the tax under the Federal Unemployment Tax Act (FUTA).

By May 31, 2006, please send thirteen (13) copies of *The Official Catholic Directory* for 2006 to IRS TE/GE in Cincinnati; one copy to the Processing Campus in Ogden; two copies each to the EO Area Managers in Newark, Brooklyn, Chicago, St. Paul, Atlanta, Los Angeles, the IRS National Headquarters and the Director, EO Examinations, Dallas.

The conditions concerning the retention of your group exemption as set forth in our previous determination letter of August 17, 1983, remain in full force and effect.

Sincerely,

A handwritten signature in cursive script that reads "James Blair". The signature is written in dark ink and is positioned above the typed name and title.

for Janna Skufca, Director, TE/GE
Customer Account Services